

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PRICE, HENEVELD, COOPER, DEWITT
& LITTON,

Plaintiff/Counter-Defendant,

v.

Case No. 04-CV-00561

ANNUITY INVESTORS LIFE
INSURANCE COMPANY,

Defendant/Counter-Plaintiff.

**ORDER DENYING PLAINTIFF'S
"MOTION FOR LEAVE TO FILE AMENDED COMPLAINT"**

In this account-stated case, Plaintiff now presents a motion for leave to amend its complaint to state an additional claim of breach of contract. The case has been pending since July, 2004, and discovery has concluded.

Whether to allow an amendment of a pleading is governed by Federal Rule of Civil Procedure 15, which provides that, after a responsive pleading has been filed, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." The thrust of this provision "is to reinforce the principle that cases should be tried on their merits rather than on the technicalities of pleadings." *Tefft v. Seward*, 689 F.2d 637, 639 (6th Cir. 1982). "In the decision whether to permit an amendment, some of the factors which may be considered by the trial court are undue 'delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of

amendment.”” *General Elec. Co. v. Sargent & Lundy*, 916 F.2d 1119, 1130 (6th Cir. 1990) (citing *Hageman v. Signal L.P. Gas, Inc.*, 486 F.2d 479, 484 (6th Cir. 1973)).

This case is in its final stage in preparation for trial, and Defendant argues convincingly that it will be substantially prejudiced by an added claim with different elements and defenses on which it will be impossible to conduct discovery without an extension of the litigation.

The court finds Plaintiff to have been less than diligent in its review of the status of its claims, finds no argument by Plaintiff supporting an overriding need for the amendment, and is unpersuaded that an amendment should be permitted at this hour. Accordingly,

IT IS ORDERED that Plaintiff’s “Motion For Leave To File Amended Complaint” [Dkt. # 75] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 18, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 18, 2005, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522